

§ 1.543-2

26 CFR Ch. I (4-1-03 Edition)

rent within the meaning of the second sentence of section 543(a)(7).

[T.D. 6500, 25 FR 11737, Nov. 26, 1960, as amended by T.D. 6739, 29 FR 7713, June 17, 1964; T.D. 7261, 38 FR 5467, Mar. 1, 1973]

§ 1.543-2 Limitation on gross income and personal holding company income in transactions involving stocks, securities, and commodities.

(a) Under section 543(b)(1) the gains which are to be included in gross income, and in personal holding company income with respect to transactions described in section 543(a)(2) and paragraph (b)(5) of § 1.543-1, shall be the net gains from the sale or exchange of stock or securities. If there is an excess of losses over gains from such transactions, such excess (or net loss) shall not be used to reduce gross income or personal holding company income for purposes of the personal holding company tax. Similarly, under section 543(b)(2) the gains which are to be included in gross income, and in personal holding company income with respect to transactions described in section 543(a)(3) and paragraph (b)(6) of § 1.543-1, shall be the net gains from commodity transactions which reflect personal holding company income. Any excess of losses over gains from such transactions (resulting in a net loss) shall not be used to reduce gross income or personal holding company income. The capital loss carryover under section 1212 shall not be taken into account.

(b) The application of section 543(b) may be illustrated by the following examples:

Example 1. The P Corporation, not a regular dealer in stocks and securities, received rentals of \$250,000 for its property from a 25-percent shareholder, and also had gains of \$50,000 during the taxable year from the sale of stocks and securities. It also had losses on the sale of stocks and securities in the amount of \$30,000. Accordingly, P Corporation had gross income during the taxable year of \$270,000 (\$250,000 plus \$20,000 net gain from the sales of stocks and securities). It had personal holding company income of \$20,000. (The rentals of \$250,000 would not be personal holding company income under section 543(a)(6) since the personal holding company income of the corporation, \$20,000 (after excluding any such income described in section 543(a)(6)), is not more than 10 percent of its gross income.)

Example 2. The R Corporation, not a regular dealer in stocks or securities, realized total gains during the taxable year of \$900,000 from commodity futures transactions and \$200,000 from the sales of stocks and securities. It also sustained total losses of \$1,000,000 on such commodity futures transactions, resulting in a net gain for the taxable year of \$100,000. None of the commodity futures transactions are hedging or other types of futures transactions excluded from the application of section 543(a)(3). No part of the loss on commodity futures transactions is to be taken into account in determining personal holding company income and gross income for personal holding company tax purposes for the taxable year. The full amount of the \$200,000 in gains from the sales of stocks and securities is to be included in personal holding company income and in gross income for personal holding company tax purposes for the taxable year.

§ 1.544-1 Constructive ownership.

(a) Rules relating to the constructive ownership of stock are provided by section 544 for the purpose of determining whether the stock ownership requirements of the following sections are satisfied:

(1) Section 542(a)(2), relating to ownership of stock by five or fewer individuals.

(2) Section 543(a)(5), relating to personal holding company income derived from personal service contracts.

(3) Section 543(a)(6), relating to personal holding company income derived from property used by shareholders.

(4) Section 543(a)(9), relating to personal holding company income derived from copyright royalties.

(b) Section 544 provides four general rules with respect to constructive ownership. These rules are:

(1) Constructive ownership by reason of indirect ownership. See section 544(a)(1) and § 1.544-2.

(2) Constructive ownership by reason of family and partnership ownership. See section 544(a) (2), (4), (5), and (6), and §§ 1.544-3, 1.544-6, and 1.544-7.

(3) Constructive ownership by reason of ownership of options. See section 544(a) (3), (4), (5), and (6), and §§ 1.544-4, 1.544-6, and 1.544-7.

(4) Constructive ownership by reason of ownership of convertible securities. See section 544(b) and § 1.544-5.